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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,461	11/03/2003	James Robar	M539 0002 GNM/cc	3470
720	7590	09/09/2004	EXAMINER	
OYEN, WIGGS, GREEN & MUTALA 480 - THE STATION 601 WEST CORDOVA STREET VANCOUVER, BC V6B 1G1 CANADA			LU, TOM Y	
		ART UNIT	PAPER NUMBER	
		2621		
DATE MAILED: 09/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b><i>Office Action Summary</i></b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/698,461	ROBAR ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Tom Y Lu	2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on \_\_\_\_.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3, 7, 8, 10-16, 19, 23 and 24 is/are rejected.

7)  Claim(s) 4-6, 9, 17, 18 and 20-22 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).
3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
4. Claims 1, 2, 3, 7, 8, 10, 11, 12, 13, 14, 15, 16, 19, 23 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18 of Robar et al, U.S. Patent No. 6,668,073 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because:
  - a. Claim 1 recites a body of tissue-equivalent material (Robar in Claim 18, teaches "a hollow shell made of a tissue-equivalent material"), the body

surrounding a cavity (“a box made of tissue-equivalent material”) capable of receiving a stack of sheets of film separated by tissue-equivalent spacers (“loading multiple layers of films separated by multiple spacers having tissue-equivalent characteristics into the box”); the cavity having walls (a box inherent has walls), the walls including at least one translucent area (“a diagonal strip that is made of a material translucent to visible light”) which extends through at least one opaque area of the walls (“wherein the box is opaque to visible light”), the at least one translucent area configured to intersect edges of different sheets of film in a stack of sheets of film in the chamber at different locations (“automatically ordering and orienting the multiple layers of film based upon an indexing mark uniquely recorded on an edge of each of the multiple layers of film by light passing through the diagonal strip”. Note diagonal strip on the box intersects edges of films at different locations).

- b. Claim 2 recites the civility is rectilinear (a box is rectilinear).
- c. Claim 3 recites the at least one translucent area comprises at least one translucent strip (Robar teaches the translucent area is a translucent strip).
- d. Claim 7 recites the at least one translucent area comprises at least one translucent strip (Robar teaches the translucent area is a translucent strip).
- e. Claim 8 recites the body is cylindrical (Robar teaches the hollow shell is formed in the shape of a human head, which is cylindrical).
- f. Claim 10 recites the body comprises a fluid-filled shell and the cavity is defined within a box located within the fluid-filled shell (Robar in Claim

18, teaches “a hollow shell made of a tissue equivalent material and filled with a fluid-tissue equivalent material” and “the hollow shell including a box made of tissue-equivalent material”).

g. Claim 11 recites the body has the shape of a human head (Robar in Claim 18, teaches “the hollow shell being adapted to simulate a human head”).

h. Claim 12 recites a simulated lesion replaceably positionable within the cavity (“registering an image of lesion to be treated including its position with respect to the hollow shell in software”, and the box is removable, claim 18)

i. Claim 13 recites multiple layers of film in the cavity and separated from one another by multiple tissue-equivalent spacers (Robar in Claim 18, teaches “loading multiple layer of film separated by multiple spacers having tissue-equivalent characteristics into the box”).

j. With regard to Claim 14, see Claim 18 in Robar.

k. With regard to Claim 15, see step i in Claim 18 of Robar.

l. With regard to Claim 16, see step i in Claim 18 of Robar.

m. With regard to Claim 19, see step i in Claim 18 of Robar.

n. With regard to Claim 23, see steps b and c in Claim 18 of Robar.

o. With regard to Claim 24, the radiation source in Robar is a linear accelerator.

***Allowable Subject Matter***

5. Claims 4, 5, 6, 9, 17, 18, 20, 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

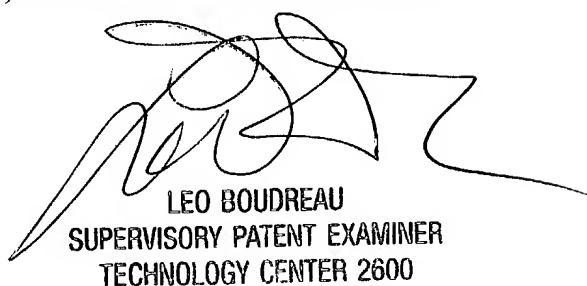
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Feichtner et al U.S. Patent No. 5,430,308, see figure 3, column 3.
- b. Sliski U.S. Patent No. 5,511,107, see figures 5 to 7.
- c. Floyd et al, U.S. Patent No. 5,651,046, see column 4.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Y Lu whose telephone number is (703) 306-4057. The examiner can normally be reached on 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo H Boudreau can be reached on (703) 305-4706. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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